# **EXHIBIT A**

#### Commonwealth of Massachusetts

SUFFOLK, \$S.

TRIAL COURT OF THE COMMONWEALTH

	SUPERIOR COURT DEPARTMENT CIVIL DOCKET NO. 16-03746
	Teron Malarba Plaintiff(s),
	v. ·
	Elements Insurance DEFENDANT(S)
	SUMMONS
	THIS SUMMONS IS DIRECTED TO Flements Indurance . (Defendant's name)
	You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Such Superior Court. YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.
<b>1.</b>	You must respond to this lawsuit in writing within 20 days. If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. If you need more time to respond, you may request an extension of time in writing from the Court.
2.	How to Respond. To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
	Filing your signed original response with the Clerk's Office for Civil Business, Solah WCourt, Court, Sq. (address), by mail or in person, AND
	Delivering or mailing a copy of your response to the Plaintiff's Attorney/Plaintiff at the following address: 43 Bowden St. Sown R. Borben, who ball the following address:

3. What to include in your response. An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as counterclaims) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must specifically request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "Motion to Dismiss," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov.courts/case-legal-res/rules of court.

	Legal Assistance. You may wish to get legal help from information for people who represent themselves is a	·
	Required information on all filings: The "civil docket r	*
	case number assigned to this case and must appear or	
	You should refer to yourself as the "Defendant."	THE PORCOT YOU ANSWER OF WOODS TO DISTRI
•	Tou strong to the Asset as the Sectional	
	Witness Hon. Judith Fabricant, Chief Justice on	. 20
	Michael Joseph Donovan  Michael Joseph Donovan	
	Clerk-Magistrate	
	Note: The number assigned to the Complaint by the Clerk-Magistra summons before it is served on the Defendant.	ate at the beginning of the lawsuit should be indicated o
	PROOF OF SERVIC	CE OF PROCESS
	I hereby certify that on Februs 6	70.19
	together with a copy of the complaint in this action, on	, 20 <b>18</b> , I served a copy of this summor
	following manner (See Mass. R. Civ. P. 4 (d)(1-5)):	i the defendant hamed in this summons, in th
	IN 14MD TO 2ACH 1477 EN	of Belling of Glemens
	INVANCE AT 745 ATUNTIC ARE	NAM
	Dated:	Signature: 5 16
	N.B. TO PROCESS SERVER:	•
	(4154 10 110 0000 0011 1111	
	•	RVICE ON THE DEFENDANT IN THIS BOX BO
	PLEASE ENTER THE DATE THAT YOU MADE SEE	
	•	
	PLEASE ENTER THE DATE THAT YOU MADE SEE	
	PLEASE ENTER THE DATE THAT YOU MADE SEE ON THE ORIGINAL SUMMONS AND ON THE COPY OF T	THE SUMMONS SERVED ON THE DEFENDANT
	PLEASE ENTER THE DATE THAT YOU MADE SEE	THE SUMMONS SERVED ON THE DEFENDANT

#### **Commonwealth of Massachusetts**

SUFFOLK, \$S.	TRIAL COURT OF THE COMMONWEALTH SUPERIOR COURT DEPARTMENT CIVIL DOCKET NO. 18-05746
Jaron Malerba PLAINTIFF(S),	
v. Janna Harvis DEFENDANT(S)	·
SUMM	ons ,
THIS SUMMONS IS DIRECTED TO Yama Har	. (Defendant's name

You are being sued. The Plaintiff(s) named above has started a lawsuit against you. A copy of the Plaintiff's Complaint filed against you is attached to this summons and the original complaint has been filed in the Second Court. YOU MUST ACT PROMPTLY TO PROTECT YOUR RIGHTS.

- 1. You must respond to this lawsuit in writing within 20 days. If you do not respond, the court may decide the case against you and award the Plaintiff everything asked for in the complaint. You will also lose the opportunity to tell your side of the story. You must respond to this lawsuit in writing even if you expect to resolve this matter with the Plaintiff. If you need more time to respond, you may request an extension of time in writing from the Court.
- 2. How to Respond. To respond to this lawsuit, you must file a written response with the court and mail a copy to the Plaintiff's Attorney (or the Plaintiff, if unrepresented). You can do this by:
  - a. Filing your signed original response with the Clerk's Office for Civil Business, Section Court, 3 Rembersh 59 (address), by mail or in person, AND
- 3. What to include in your response. An "Answer" is one type of response to a Complaint. Your Answer must state whether you agree or disagree with the fact(s) alleged in each paragraph of the Complaint. Some defenses, called affirmative defenses, must be stated in your Answer or you may lose your right to use them in court. If you have any claims against the Plaintiff (referred to as counterclaims) that are based on the same facts or transaction described in the Complaint, then you must include those claims in your Answer. Otherwise, you may lose your right to sue the Plaintiff about anything related to this lawsuit. If you want to have your case heard by a jury, you must specifically request a jury trial in your Answer or in a written demand for a jury trial that you must send to the other side and file with the court no more than 10 days after sending your Answer. You can also respond to a Complaint by filing a "Motion to Dismiss," if you believe that the complaint is legally invalid or legally insufficient. A Motion to Dismiss must be based on one of the legal deficiencies or reasons listed under Mass. R. Civ. P. 12. If you are filing a Motion to Dismiss, you must also comply with the filing procedures for "Civil Motions" described in the rules of the Court in which the complaint was filed, available at www.mass.gov.courts/case-legal-res/rules of court.

- 4. Legal Assistance. You may wish to get legal help from a lawyer. If you cannot get legal help, some basic information for people who represent themselves is available at www.mass.gov/courts/selfhelp.
- 5. Required information on all filings: The "civil docket number" appearing at the top of this notice is the case number assigned to this case and must appear on the front of your Answer or Motion to Dismiss.

  You should refer to yourself as the "Defendant."

Witness Hon. Judith Fabricant, Chief Justice on	, 20
Michael Joseph Donovan	•
Clerk-Magistrate	

Note: The number assigned to the Complaint by the Clerk-Magistrate at the beginning of the lawsuit should be indicated on the summons before it is served on the Defendant.

# **PROOF OF SERVICE OF PROCESS**

l hereby	y certify that on _	Emmy 6	····	, 20 <u><b>18</b></u> , I served a	copy of this	summons,
together with a	copy of the com	plaint in this action	n, on the d	efendant named îr	n this summo	ns, in the
following mann	er (See Mass. R. (	Civ. P. 4 (d)(1-5)):		٠.		. •
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47 745	MUNTIC /	verw				
						<del></del>
Dated: Kby	my G.	, 20 <b></b> &	Signa	ature: £	dC	Suff

N.B. TO PROCESS SERVER:

PLEASE ENTER THE DATE THAT YOU MADE SERVICE ON THE DEFENDANT IN THIS BOX - BOTH ON THE ORIGINAL SUMMONS AND ON THE COPY OF THE SUMMONS SERVED ON THE DEFENDANT.

February 6, 2018

CIVII A	CTION COVER SHEET	DOCKET NUMBER		Trial Court of Massachusett	s A
CIAIT W	CHON COVER SHEET			The Superior Court	
PLAINTIFF(S):	Jeron Malerba			COUNTY	
ADDRESS:				Suffolk	
			DEFENDANT(S):	Elements Insurance, LLC and Yanna Harris, individually	
			····		
ATTORNEY:	John Regan		·		
ADDR <b>ESS:</b>	43 Bowdoin Street, Suite A		ADDRESS:		
Boston, MA 02114	4		**************************************		
BBO:	684326				
	TYPE OF	ACTION AND TRACK	DESIGNATION (SE	ee reverse side)	
CODE F A	Non payment of Wage		TRACK	HAS A JURY CLAIM BEEN MADE?  YES NO	
*If "Other" plea	se describe:				
	STATE	MENT OF DAMAGES	PURSUANT TO G.	L. c. 212, § 3A	
The following is:				if or plaintiff counsel relies to determine money dama	anes For
this form, disreg	ard double or treble damage claims; indi	icate single damages o	nly.		.goo o.
			RT CLAIMS nai sheets as necess	The second secon	
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				\$	<del></del>
4. Tot	al physical therapy expenses	. + . 1 . 0 . 5 +			
5, Tota	al other expenses (describe below)	***************************************		Subtotal (A): \$	
R Documented	lost wages and companyation to date		ž	\$	
C. Documented	property damages to dated	*******************	***************************************		
	anticipated future medical and hospital e anticipated lost wages			\$ <u>-</u>	
				\$	
			y.		
G. Briefly descri	be plaintiffs injury, including the nature	and extent of injury:			
į				TOTAL (A-F):\$	
		CONTRA	CT CLAIMS		
		•	sheets as necessary	•	
Provide a detail	ed description of claims(s):	400 Frita	- paid ou	whine totals of	5,000
	gt 12 %	9,15 Ass	وندسخ.	·	
	Attorney/Pro Se Plaintiff: X			Date:	
RELATED A	CTIONS: Please provide the case no	umber, case name, a	and <b>co</b> unty of <b>any</b>	related actions pending in the Superior Court.	
	CEI	RTIFICATION PURS	UANT TO SJC R	ULE 1:18	
Rule 1:18) red	fy that I have complied with requiren	nents of Rule 5 of the information about co	e Supreme Judicia ourt-connected dis	al Court Uniform Rules on Dispute Resolution ( spute resolution services and discuss with then	
	<u> </u>			Data	
Signature of	Attorney of Record: X	Mr. Milly war		Date:	···

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# CIVIL ACTION COVER SHEET INSTRUCTIONS SELECT CATEGORY THAT BEST DESCRIBES YOUR CASE

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Affairs of Entities  Affairs, and Entitions, action of Arbitrust Act C. L. c. 93 §8 (X)  Affairs of Entities  Affairs of Entities  Affairs, and Entitions Action Awards  Affairs of Entities Action involving an incarcerated Party. Units Act, C. L. c. 128 §8 (X)  Affairs of Entities  Affairs of Entities Action involving an incarcerated Party with Action of Arbitrust Act, C. L. c. 128 §8 (X)  Affairs of Entities  Affairs of Entities Action involving an incarcerated Party with Action of Arbitrust Act, C. L. c. 128 §8 (X)  Affairs of Entities  Affairs of Entities Action involving an incarcerated Party with Action of Arbitrust Act, C. L. c. 128 §8 (X)  Affairs of Entities Action involving an incarcerated Party with Action of Arbitrust Act, C. L. c. 128 §8 (X)  Affairs of Entities Action of Arbitrust Act, C. L. c. 128 §8 (X)						• •		
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Regulation Laws (A) A99 Other Contract/Business Action - Specify (F)  B04 Other Negligence - Personal (njury/Property Damage (F) B05 Products Liability B08 Malpractice - Medical / Wrongful Death (A) B07 Malpractice - Other (A) B08 Malpractice - Other (A) B09 Other Contract/Business Action - Specify (F) B07 Malpractice - Other (A) B08 Wrongful Death (A) B08 Wrongful Death (A) B09 Other Administrative Action (X) B09 Other Administrative Action (X) B15 Defamation (A) B15 Defamation (A) B16 Defamation (A) B17 Defamation (A) B18 Abesios (A) B19 Abesios (A) B19 Abesios (A) B20 Personal Injury - Slip & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B23 Environmental (B) B24 Environmental (A) B25 Forfeiture, G.L. c.268 §58 (X) B29 Other Administrative Action (X) B29 Other Administrative Action (X) B19 Other Slip & Fall (F) B20 Personal Injury - Slip & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B23 Environmental (F) B24 Environment, G.L. c.123 §5(b) (X) B29 Other Administrative Action (X) B29 Other Administrative Action (F) B20 Personal Injury - Slip & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B23 Employment Discrimination (F) B24 Environmental (A) B25 Forfeiture, G.L. c.268 §58 (X) B29 Other Administrative Action (A) B29 Other Administrative Action (F) B20 Personal Injury - Slip & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B23 Employment Discrimination (F) B24 Environmental (A) B25 Forfeiture, G.L. c.268 §58 (X) B29 Other Administrative Action (F) B20 Exployment Discrimination (F) B21 Environmental (F) B22 Employment Discrimination (F) B22 Environmental (F) B23 Environmental (F) B24 Environmental (A) B25 Fordative Action (F) B27 Environmental (F) B28 Exployment Discrimination (F) B29 Other Administrative Action (F) B21 Environmental (F) B22 Environmental (F) B23 Environmental (F) B24 Environmental (F) B25 Plearrative, G.L. c.268 §58 (X) B27 Minor Seeking Country, G.L. c. 123 §(b) B27 Minor Seeking Coun			(A)			(6)	E17 Civil Rights Act, G.L. c.12 §11H	(A)
A99 Other Contract/Business Action - Specify (F)  A99 Other Contract/Business Action - Specify (F)  A99 Other Contract/Business Action - Specify (F)  * Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).  † Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).    A99 Other Contract/Business Action - Specify (F)   B05 Products Liability (A)   B06 Malpractice - Other (A)   B07 Malpractice - Other (A)   B08 Wrongful Death, G.L. c.229 §2A (A)   B08 Wrongful Death, G.L. c.229 §2A (A)   B08 Wrongful Death, G.L. c.229 §2A (A)   B09 Wrongful Death, G.L. c.229 §2A (A)   Coll. c. 231 §50B (F)   Coll. c. 232 §50B (F)   Coll.	8					(4)	E24 Appeal from District Court	
*Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).  † Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).  † Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case you is a Prisoner Habeas Corpus case (E97).  **TRANSFER YOUR SELECTION TO THE FACE SHEET*  B05 Products Liability (A) E95 Forfeiture, G.L. c. 284 § 358 (X) E94 Forfeiture, G.L. c. 294 § 47 (F) (A) E95 Forfeiture, G.L. c. 294 § 47 (F) E95 Other Administrative Action (X) 201 Medical Matpractice - Tribunal only, G.L. c. 231 § 50B (F) SO Sex Offender Review  **To Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case you have a case in the case of the ca						(5)	Commitment, G.L. c.123 §9(b)	(X)
*Choose this case type if ANY party is the Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).  † Choose this case type if ANY party is an incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).  *B06 Malpractice - Medical / Wrongful Death B07 Malpractice - Other B08 Wrongful Death, G.L. c.298 §2A (A) B08 Wrongful Death B08 Wrongful Death B07 Malpractice - Other B08 Wrongful Death B08 Malpractice - Other B07 Malpractice - Other B08 Wrongful Death B08 Malpractice - Other B08 Wrongful Death B08 Wrongful Death B08 Malpractice - Other B08 Wrongful Death B09 Malpractice - Other B09 Other Administrative Action CA) B09 Other Fall B19 Sex Offender Review B19 Sex Offender Registry, G.L. c. 123A §12 (X) B19 Sex Offender Registry, G.L. c. 123A §12 (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender Registry, G.L. c. 123A §178M (X) B19 Sex Offender	Α	99 Other Contract/Business Action	n - Specify (F)				E25 Pleural Registry (Asbestos cases)	
Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (AA).  B15 Defamation (A) G.L. c. 231 §50B (F) Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (B20 Personal Injury - Silp & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B23 Employment Discrimination (F) B24 Employment Discrimination (F) B25 Employment Discrimination (F) B26 Employment Discrimination (F) B27 Employment Discrimination (F) B28 Employment Discrimination (F) B29 Other Tortious Action (F) B29 Other Tortious							E94 Forfeiture, G.L. c265 §56	(X)
Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (AA).  B15 Defamation (A) G.L. c. 231 §80B (F) Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (B20 Personal Injury - Silp & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B23 Employment Discrimination (F) B24 Employment Discrimination (F) B25 Employment Discrimination (F) B26 Employment Discrimination (F) B27 Employment Discrimination (F) B28 Employment Discrimination (F) B29 Other Tortious Action (F) B29 Other Tortious				BUB Maipractice - Mis	soicsi i Antoudini mesiu		E95 Forfeiture, G.L. c.94C §47	(F)
Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (AA).  B15 Defamation (A) G.L. c. 231 §80B (F) Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type fisted under Administrative Civil Actions (B20 Personal Injury - Silp & Fall (F) B21 Environmental (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B22 Employment Discrimination (F) B23 Employment Discrimination (F) B24 Employment Discrimination (F) B25 Employment Discrimination (F) B26 Employment Discrimination (F) B27 Employment Discrimination (F) B28 Employment Discrimination (F) B29 Other Tortious Action (F) B29 Other Tortious	_	<b>6</b> 1				(A)		ίχi
Commonwealth, a municipality, the MBTA, or any other governmental entity UNLESS your case is a case type listed under Administrative Civil Actions (AA).  B19 Asbestos  B20 Personal Injury - Silp & Fall  B21 Environmental  B22 Employment Discrimination  B23 Employment Discrimination  B24 Employment Discrimination  B25 Employment Discrimination  B26 Employment Discrimination  B27 Employment Discrimination  B28 Employment Discrimination  B29 Other Tortious Action  B20 Personal Injury - Silp & Fall  B21 Environmental  B22 Employment Discrimination  B23 Employment Discrimination  B24 Employment Discrimination  B25 Employment Discrimination  B27 Employment Discrimination  B28 Employment Discrimination  B29 Other Tortious Action  B29 Other Tortious Action  B21 Environmental  B22 Employment Discrimination  B23 Employment Discrimination  (F)  SO Sex Offender Review  B25 Dersonal Injury - Silp & Fall  (F)  SO Sex Offender Review  B28 Environment, G.L. c. 123A §12  (X)  E14 SDP Petition, G.L. c. 123A §9(b)  (X)  RC Restricted Civil Actions  E19 Sex Offender Registry, G.L. c.8 §178M  (X)  E27 Minor Seeking Consent, G.L. c. 112 §12S  (X)  TRANSFER YOUR SELECTION TO THE FACE SHEET  EXAMPLE:  CODE NO. TYPE OF ACTION (specify) TRACK HAS A JURY CLAIM BEEN MADE?					G.L. C.229 §2A	(A)		
(AA).    B21 Environmental   (F)   SO Sex Offender Review	C	ommonwealth, a municipality, the	MBTA, or any			(A)		(F)
(AA).    B21 Environmental   (F)   SO Sex Offender Review						(A)		ίχί
## Choose this case type if ANY party is an BE1 Fraud, Business Torts, etc. (A) E12 SDP Commitment, G.L. c. 123A §12 (X) Incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).  ### BE2 Employment Discrimination (F)  ### BE1 Fraud, Business Torts, etc. (A)  ### B99 Other Tortious Action (F)  ### B99 Other Tortious			re Civil Actions		· Slip & Fall			V-3
† Choose this case type if ANY party is an BE1 Fraud, Business Torts, etc. (A) E12 SDP Commitment, G.L. c. 123A §12 (X) incarcerated party, UNLESS your case is a case type listed under Administrative Civil Actions (AA) or is a Prisoner Habeas Corpus case (E97).  B99 Other Tortious Action (F) E14 SDP Petition, G.L. c. 123A §9(b) (X) RC Restricted Civil Actions  E19 Sex Offender Registry, G.L. c.8 §178M (X) E27 Minor Seeking Consent, G.L. c.112 §12S (X)  TRANSFER YOUR SELECTION TO THE FACE SHEET  EXAMPLE:  CODE NO. TYPE OF ACTION (specify) TRACK HAS A JURY CLAIM BEEN MADE?	(/	<b>₹A).</b>					SO Sex Offender Review	
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#### STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

DUTY OF THE PLAINTIFF - The plaintiff shall set forth, on the face of the civil action cover sheet (or attach additional sheets as necessary), a statement specifying the facts on which the plaintiff relies to determine money damages. A copy of such civil action cover sheet, including the statement as to the damages, shall be served with the complaint. A clerk-magistrate shall not accept for filing a complaint, except as otherwise provided by law, unless it is accompanied by such a statement signed by the attorney or pro se party.

DUTY OF THE DEFENDANT - If the defendant believes that the statement of damages filed by the plaintiff is inadequate, the defendant may ill with his/her answer a statement specifying the potential damages which may result if the plaintiff prevails.

A CIVIL COVER SHEET MUST BE FILED WITH EACH COMPLAINT.
FAILURE TO COMPLETE THIS COVER SHEET THOROUGHLY AND ACCURATELY
MAY RESULT IN DISMISSAL OF THIS ACTION.

#### COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.	OF THE TRIAL COURT		
JARON MALERBA;	)		
Plaintiff,	) ) )	The state of the s	
v.	) C.A. No.		
ELEMENTS INSURANCE, LLC; YANA HARRIS, individually;	) )	File mile (1929)	
Defendants.	}	A FRANCISCO TO BETTE OF A STATE O	

#### PLAINTIFF'S COMPLAINT AND JURY DEMAND

The Plaintiff Jaron Malerba, for his complaint and jury demand against Elements Insurance, LLC and Yana Harris, individually (collectively, the "Defendants"), states as follows:

#### **PARTIES**

- 1. The Plaintiff Jaron Malerba (the "Plaintiff" or "Mr. Malerba") is an individual residing in Winthrop, MA. The Defendants employed Mr. Malerba in Boston, Massachusetts from on or about April 23, 2015 until on or about September 6, 2017 as an inside sales employee.
- 2. The Defendant Elements Insurance, LLC ("Elements") is a domestic profit corporation with a principal office located at 745 Atlantic Avenue, 8<sup>th</sup> Floor Boston, MA 02111.
- 3. The Defendant Yana Harris ("Ms. Harris") is the General Manager of Elements as well as, upon information and belief, its owner. Throughout Mr. Malerba's tenure, Ms. Harris managed the day-to-day operations of Elements, including payroll and Human Resources, and supervised Mr. Malerba.

### **JURISDICTION**

- 4. This action arises under Massachusetts General Laws c. 149, §§ 148, 150; c. 151, §§ 1, 1A-1B as well as 29 U.S.C. 207(a)(1) (hereinafter referred to as the "Fair Labor Standards Act").
- 5. The Court has original jurisdiction over this action, as it is a civil action where more than \$25,000 is in controversy.
- 6. In compliance with M.G.L. c. 149, § 150, a Non-Payment of Wage and Workplace Complaint Form was filed for the Plaintiff with the Massachusetts Office of the Attorney General prior to initiating this action.
- 7. Venue in Suffolk County Superior Court is proper because the facts that give rise to this complaint predominantly took place in Boston, MA.

#### **FACTS**

- 8. Elements operates an insurance company in Boston, MA where it sells insurance products to the general public. Elements is not a business that is engaged in the sale of products at retail. Indeed, regulations issued by the United States Department of Labor state that "transactions of an insurance company are not ordinarily thought of as retail transactions," and lists "[i]nsurance; mutual, stock and fraternal benefit, including insurance brokers, agents, and claims adjustment offices" as establishments to which the § 7(i) exemption does not apply. 29 C.F.R. §§ 779.316 and 779.317 (2005).
- 9. At all relevant times, Mr. Malerba was paid an hourly rate equal to the minimum wage in Massachusetts. Additionally, Mr. Malerba was paid certain additional amounts as commissions for weeks in which he sold insurance products on behalf of Elements Insurance.
- 10. The Defendants should have paid Mr. Malerba one and one half times (1.5x) his regular hourly rate for all hours worked in excess of forty (40) hours in a week.

- 11. Plaintiff often worked more than forty (40) hours per week.
- 12. During weeks that Mr. Malerba worked more than 40 hours in a week, he was told by management, including Mr. Harris, to record fewer than 40 hours for payroll. Indeed, Mr. Malerba worked many hours per week "off the clock."
- 13. Plaintiff was never paid one and one half times (1.5x) his regular hourly rate for hours worked in excess of forty (40) in a week.
- 14. Despite the fact that they promised to do so in their offer letter, Defendants did not even pay Plaintiff at a rate of time and a half (1.5x) times the minimum wage when he worked more than forty (40) hours per week.
- 15. Indeed, Defendants did not pay Mr. Malerba any wages for hours worked over forty (40) hours in a week.
- 16. The Defendants did not track "the hours worked each day and each week by each employee" as required by M.G.L. c. 151 §15.
- 17. In stark violation of Massachusetts and Federal law, Elements has a policy of providing employees with so-called "comp time" which deprives employees of overtime payments in certain weeks. Indeed, on December 5, 2017, Ms. Harris testified, under oath, that "...one could go over 40 hours in a given week, but those hours are to make up hours for another week where they may have only worked 20 hours..."

# <u>COUNT I</u> <u>VIOLATIONS OF M.G.L. c. 149, §§ 148, 150; c. 151, § 1A-1B</u> (As to all Defendants)

- 18. The Plaintiff incorporates paragraphs 1 through 17 above as if fully set forth herein.
- 19. Pursuant to M.G.L. c. 151, § 1A-1B the Defendants were required to pay the Plaintiff an hourly rate equal to one and one-half times his regular hourly rate for all the hours that he worked in excess of 40 (forty) during any given week.

- 20. As detailed above, the Plaintiff regularly worked over 40 (forty) hours each week.
- 21. The Defendant did not pay the Plaintiff for the hours that he worked in excess of 40 (forty) during any given week at an hourly rate equal to one and one-half times his regular rate of pay, or even his regular rate of pay, when such wages were due and payable under M.G.L. c. 149, § 148.
- 22. As a direct result of the failure by the Defendant to fully and timely compensate the Plaintiff for all the hours that he worked in excess of 40 (forty) during any given week when the wages for those hours were due and payable, he has lost wages and suffered damages in amount to be proven at trial, including treble damages, statutorily prescribed interest, costs, and, attorneys' fees.

# COUNT II VIOLATIONS OF 29 U.S.C. 207(a)(1) (As to all Defendants)

- 23. The Plaintiffs re-allege and incorporate paragraphs 1 through 22 above as if fully set forth herein.
- 24. As described above, Mr. Malerba regularly worked more than 40 hours each week during his tenure with Elements.
- 25. Despite regularly working in excess of 40 hours in certain weeks, Defendants did not pay the Plaintiff an hourly rate equal to one and one half times his regular hourly rate for all of the hours that he worked in excess of 40 during multiple pay periods.
- 26. Accordingly, Defendants' failure to pay the Plaintiff an hourly rate equal to one and one half times his regular hourly rate for all of the hours that he worked in excess of 40 caused him to suffer damages in an amount to be proven at trial.

#### COUNT III

# VIOLATIONS OF M.G.L. c. 149 §§ 148; 150.

(As to all Defendants)

- 27. The Plaintiff re-alleges and incorporates paragraphs 1 through 26 above as if fully set forth herein.
- 28. Elements failed to pay Mr. Malerba all the wages that were due and payable to him at the end of each pay period.
- 29. Consequently, Mr. Malerba is entitled treble damages (3x) for all wages not paid each pay period under the FLSA. See Lambirth v. Advanced Auto, Inc., 140 F. Supp. 3d 108, 111-112 (D. Mass. 2015).

### PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff prays that this Honorable Court:

- i. Enter judgment on Counts I, II and III, and award treble damages, attorneys' fees, costs, and statutorily prescribed interest;
- ii. Such other and further relief that the Court deems just and equitable.

## **DEMAND FOR JURY TRIAL**

The Plaintiff demands a jury trial on all issues so triable.

PLAINTIFF JARON MALERBA

By his attorney,

John Regan **BBO** #684326

Employee Rights Group, LLC

43 Bowdoin Street, Ste. A

Boston, MA 02114

T: (857) 277-0902

F. 857-233-5287

jregan@maemployeerights.com

Dated: February 1, 2018.